

Exhibit "A"

STATE OF MONTANA  
BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

-----  
IN THE MATTER OF APPLICATION FOR ) FINDINGS OF FACT, CONCLUSIONS OF  
BENEFICIAL WATER USE PERMIT NO. ) LAW, AND ORDER  
13,012-g76LJ BY RALPH V. DULIN )  
-----

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter as entered on July 9, 1979 by the Hearing Examiner, are hereby adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order, except by request of the Applicant the Application is transferred into the name of Dick-Char Corporation.

FINAL ORDER

The Provisional Permit shall be issued subject to the following conditions:

- 1.) Application for Beneficial Water Use Permit No. 13,012-g76LJ by Ralph V. Dulin (Dick-Char Corporation) is hereby granted to appropriate 1.33 cubic feet per second or 600 gallons per minute of water, not to exceed 112.5 acre-feet per annum in Flathead County, Montana, to be withdrawn from a groundwater pit at a point in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 24, Township 30 North, Range 21 West, M.P.M., and used for supplemental irrigation water on 20 acres in the NE $\frac{1}{4}$  and 20 acres in the NW $\frac{1}{4}$  of Section 24, and 50 acres in the SE $\frac{1}{4}$  of Section 13, all in Township 30 North, Range 21 West, M.P.M., and containing a total of 90 acres, more or less, from May 1 to September 1, inclusive, of each year.
- 2.) All prior existing water rights in the source of supply.
- 3.) Any final determination of existing water rights as provided by Montana law.
- 4.) That the system be designed in such a manner that pumping cannot be accomplished from both ends of the system at the same time. That is, that there will be no simultaneous appropriation being made from Trumbull Creek and the groundwater source.
- 5.) The Permittee shall install and maintain a flow meter at the pump site and shall keep records of the rate and time of pumping and shall submit such records to the Department upon request.
- 6.) That upon receipt of written complaint by any prior appropriator in the source, the Department may inspect and monitor said flow meters.

- 7.) The granting of the Provisional Permit in no way grants the Permittee any right to violate the property or any other rights of any other party, nor does it excuse the Permittee from any liability for same, even if such violation is a necessary and unavoidable consequence of exercising the Provisional Permit.
- 8.) The granting of the Provisional Permit in no way guarantees that the Permittee will be able to exercise said Provisional Permit.

RECOMMENDATION

The Department recommends that all parties in this matter install and maintain adequate measuring devices to fit their particular individual situation, and keep a log of records of water used for their own proof of their water rights and protection.

Done this 10th day of September, 1979.



Forrest Tevebaugh, D.N.R. & C.  
Hearing Examiner

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\*\*\*\*\*

IN THE MATTER OF APPLICATION FOR )  
BENEFICIAL WATER USE PERMIT NO. ) PROPOSAL FOR DECISION  
13,012-g76LJ BY RALPH V. DULIN )

\*\*\*\*\*

Pursuant to the Montana Administrative Procedures Act, after due notice, a hearing was held on June 7, 1978, at Kalispell, Montana, for the purpose of hearing objections to the above-named Application for Beneficial Water Use Permit No. 13,012-g76LJ, William Throm, Hearing Examiner, presiding.

The Applicant, Ralph V. Dulin, appeared at the hearing and presented testimony in support of the application. He was not represented by legal counsel. One (1) exhibit was introduced supporting the application, to wit:

Applicants' Exhibit: A-1-Soil Conservation Service irrigation system design.

The Applicants' exhibit was marked accordingly and received into the record with objections.

No witnesses appeared on behalf of the Applicant.

Seven Objectors attended the hearing and presented testimony or statements. Mr. Delbert Martin appeared and was represented by Counsel, Mr. Randy Ogle of the law firm Measure and Ogle of Kalispell. Mr. Paul Lynn, Mrs. Bill Blades, Mr. and Mrs. Francis Poulson, Mrs. Wayne Hulford, and Mr. Marvin Larson (untimely objector), all of whom represented themselves. No Exhibits were offered by the Objectors.

Steve White, Hydrogeologist, and Jim Rehbein, Kalispell Field Office Manager, testified for the Department.

Other Department personnel present were Forrest Tevebaugh, Assistant Hearing Examiner, and Jan Fishburn, Hearings Recorder. The Department was not represented by legal counsel.

1 Department's Exhibits:

2 D-1-Memorandum to file from Steve White. Subject: Review  
3 of Objections.

4 D-2-U.S.G.S. Composite maps of Columbia Falls North and  
5 Columbia Falls South.

6 The Department's Exhibits were marked accordingly and received into  
7 the record without objections.

8 PROPOSED FINDINGS OF FACT  
9

10 1. On May 23, 1977, the Department received an Application For  
11 Beneficial Water Use Permit No. 13,012-g76LJ by Ralph V. Dulin to appropriate  
12 1.33 cubic feet per second or 600 gallons per minute of water, not to  
13 exceed 112.5 acre-feet per annum in Flathead County, Montana, to be  
14 withdrawn from a groundwater pit at a point in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section  
15 24, Township 30 North, Range 21 West, M.P.M., and used for supplemental  
16 irrigation water on 20 acres in the NE $\frac{1}{4}$ , 20 acres in the NW $\frac{1}{4}$  of Section  
17 24, and 50 acres in the SE $\frac{1}{4}$  of Section 13, all in Township 30 North,  
18 Range 21 West, M.P.M., and containing a total of 90 acres, more or less,  
19 from May 1 to September 1, inclusive, of each year.

20 2. On August 18, 25, and September 1, 1977, the Department caused  
21 to be duly published in the Hungry Horse News, Columbia Falls, Montana,  
22 notice of the above Application For Beneficial Water Use Permit No.  
23 13,012-g76LJ.

24 3. Objections to subject application were received by the Department  
25 as follows:

- 26 1. D. Helseth on August 30, 1977  
27 2. Marvin D. Brittenham on September 7, 1977  
28 3. Wayne Hulford on September 12, 1977  
29 4. James W. Emerson on September 13, 1977  
30 5. William D. and Wetona B. Blades on September 14, 1977  
31 6. Delbert I. Martin on October 3, 1977  
32 7. Paul L. Lynn on October 3, 1977  
8. Francis and Lois Poulson on October 6, 1977

1 4. The Applicant testified that his decision to seek supplemental  
2 water was brought about by the low water in Trumbull Creek during 1977.  
3 That he had hoped to qualify for drought relief funding from the Soil  
4 Conservation Service to develop this source and that his system would be  
5 designed to S.C.S. specifications.

6 He expressed that by withdrawing water from the sump or pit during  
7 periods of low flow in Trumbull Creek, that higher flows would be maintained  
8 in the stream to the benefit of downstream users. He further said that  
9 his ninety (90) acres had been irrigated in the past from Trumbull  
10 Creek, but that in July, 1977, he ceased irrigating because of excessively  
11 low stream flow. This irrigation system that he described could be  
12 pumped into either directly from Trumbull Creek or from his intended  
13 sump. He agreed that he currently possessed a water right for 1,000  
14 miner's inches from the stream with a November 24, 1890 priority date.

15 5. Steve White, Department Hydrogeologist, testified that a  
16 pit in the gravels deposited both by the meandering of Trumbull Creek  
17 and the Flathead River could possibly have two effects on Trumbull Creek  
18 streamflow. First, that when water was being pumped from the pit there  
19 could be some lowering of streamflow because of water being drawn away  
20 toward the pit. That the amount of water actually lost from the stream  
21 by pumping from the pit would be about half of the Applicant's requested  
22 amount and the remainder would be drawn from water stored in the alluvium  
23 around the pit. That the second effect on the stream would be caused by  
24 loss of recharge water that would be intercepted by the pit after pumping  
25 ceased. He stated that while absolute withdrawal and recharge data was  
26 beyond the scope of his study, that the groundwater study he had completed  
27 gave "fairly reasonable estimates as to the effect on the waters of  
28 Trumbull Creek." That if the Applicant's pit were pumped continuously  
29 for 42 days and if there were a perfect hydrologic connection between it  
30 and the pit of Objector Martin, that the calculated potential for adverse  
31 effect to the Objector's pit could be as much as two (2) feet. Further,  
32 he stated that the potential for adverse effect would be less for the



1 other Objectors due to the increased distance between their properties  
2 and the Applicant's pit.

3 6. Jim Rehbein testified that the Applicant's request of amount of  
4 water was for supplemental irrigation on his 90 acres but would be  
5 limited to 112.5 acre-feet per year. He also explained how the amount  
6 of water needed for the project was calculated by the Department.

7 7. Delbert Martin testified that he had been irrigating from a pit  
8 since 1970 and was concerned that any additional groundwater appropriations  
9 in the area would adversely affect him. He further stated that he had  
10 applied for and been granted a new water right for neighboring land in  
11 1977. He stated that the water level in his pit lowered during July and  
12 August and that Trumbull Creek itself has occasionally ceased to flow.

13 8. Francis Poulson testified that he had irrigated from two wells  
14 and that his domestic water supply was also from the groundwater source.  
15 That in 1977 one of his wells had only 12 inches of water in it and that  
16 it would probably dry up if the Applicant had been appropriating then.  
17 He further stated that two years earlier, he had to stop irrigating in  
18 the late part of the summer due to the lack of water. He stated that he  
19 used Trumbull Creek water primarily for livestock watering purposes but  
20 at times, due to heavy irrigation demands, Trumbull Creek would cease to  
21 flow.

22 9. Mrs. Wayne Hulford testified that her objection was based  
23 solely on the fact that Trumbull Creek was the source of her domestic  
24 water supply and that she was concerned that if new appropriations were  
25 made on the stream that her water right may be jeopardized. She testified  
26 that until now, she never had a lack of water, although there were times  
27 when the stream had gotten quite low.

28 10. Mr. Marvin Larson testified that there were more filings for  
29 water on Trumbull Creek than there was water existing in the creek and  
30 that even if the Applicant pumped from his well during low periods of  
31 Trumbull Creek flow, that there would still be an adverse affect on the  
32 stream itself.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

PROPOSED CONCLUSIONS OF LAW

1. Under the provisions of Section 85-2-302, M.C.A., a beneficial water use permit is required by the Applicant to appropriate water from the proposed source of supply.
2. The Objectors to this Application for Beneficial Water Use Permit No. 13,012-g76LJ, have apparent valid prior appropriations from Trumbull Creek or from the alluvium through which Trumbull Creek flows, which under the provisions of Section 85-2-311, M.C.A., must be protected in the issuance of Beneficial Water Use Provisional Permit. It is concluded that the rights of prior appropriators will be protected if the Provisional Permit is conditioned to protect those rights.
3. There are unappropriated water in the source of supply:
  - a. At times when the water can be put to the use proposed by the Applicant;
  - b. In the amount the Applicant seeks to appropriate;
  - c. During a portion of the time which the Applicant seeks to appropriate the amount requested is available.
4. The proposed means of diversion or construction are adequate.
5. The proposed use of water is a beneficial use.
6. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.
7. Sufficient criteria for issuance of a permit as set forth under the provisions of Section 85-2-311, M.C.A., has been met and the Applicant for Beneficial Water Use Permit No. 13,012-g76LJ may be granted in accordance with the provisions of Chapter 2 of Title 85 of the Laws of the State of Montana.

PROPOSED ORDER

1. Application for Beneficial Water Use Permit No. 13,012-g76LJ by Ralph V. Dulin is hereby granted to appropriate 1.33 cubic feet per second or 600 gallons per minute of water, not to exceed 112.5 acre-feet per annum in Flathead County, Montana, to be withdrawn from a groundwater pit at a point in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 24, Township 30 North, Range 21 West, M.P.M., and used for supplemental irrigation water on 20 acres in the NE $\frac{1}{4}$ , 20 acres in the NW $\frac{1}{4}$  of Section 24, and 50 acres in the SE $\frac{1}{4}$  of Section 13, all in Township 30 North, Range 21 West, M.P.M., and containing a total of 90 acres, more or less, from May 1 to September 1, inclusive, of each year.

The Provisional Permit shall be issued subject to the following conditions:

1. All prior existing water rights in the source of supply.
2. Any final determination of existing water rights as provided by Montana law.
3. That the system be designed in such a manner that pumping cannot be accomplished from both ends of the system at the same time. That is, that there will be no simultaneous appropriation being made from Trumbull Creek and the groundwater source.
4. The Permittee shall install and maintain a flow meter at the pump site and shall keep records of the rate and time of pumping and shall submit such records to the Department upon request.
5. That upon receipt of written complaint by any prior appropriator in the source, the Department may inspect and monitor said flow meters.
6. The granting of the Provisional Permit in no way grants the Permittee any right to violate the property or any other rights of any other party, nor does it excuse the Permittee



1 from any liability for same, even if such violation is a  
2 necessary and unavoidable consequence of exercising the  
3 Provisional Permit.

- 4 7. The granting of the Provisional Permit in no way guarantees  
5 that the Permittee will be able to exercise said Provisional  
6 Permit.

7 NOTICE  
8

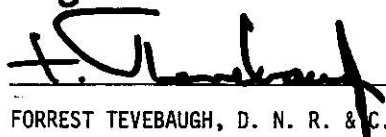
9 This Proposal for Decision is offered for the review and comment of  
10 all parties of record. The review and comment period shall commence on  
11 the mailing of this Proposal for Decision and shall end 10 days thereafter.  
12 No extension of time for comment will be granted.

13 RECOMMENDATION  
14

15 The Department recommends that all parties in this matter install  
16 and maintain adequate measuring devices to fit their particular individual  
17 situation, and keep a log of records of water used for their own proof  
18 of their water rights and protection.

19 The Final Order in this matter will be sent to all parties by  
20 certified mail. The Hearing Examiner's final decision may be appealed  
21 in accordance with the Montana Administrative Procedures Act, by filing  
22 a petition in the appropriate court within thirty (30) days after service  
23 of the Final Order. As stated prior to the Hearing by William F. Throm,  
24 who has since retired, the Proposed Order, Findings of Fact and Conclusions  
25 of Law were prepared by the undersigned, who was present during the  
26 entire hearing proceeding.

27 DATED this 9th day of July, 1979.

28   
29  
30 FORREST TEVEBAUGH, D. N. R. & C.

31 Hearing Examiner  
32